as well as to sanction a rule which encourages unlawful acts and invites litigation. It is submitted, therefore, that the principal case reached the most logical conclusion as well as the one best carrying out the intention of the parties.

TORTS—NUISANCE—ATTRACTING RATS—DESTRUCTION OF CROPS.—The defendant had for thirty years with due care and in connection with his business maintained a pile of bones which attracted rats. During the years 1916-17 a larger number than usual entered the plaintiff's land and injured his crops, although there had been no increase in the number of bones. *Held,* the defendant was not liable for the damage so caused. *Stearn* v. *Prentice* (1918) 146 L. T. 158; 63 S. J. 229.

The keeping of the bones on the defendant's land attracted rats and resulted in the injury to the plaintiff's crops. Due to the long continuance of the rats and bones it must be assumed that the defendant knew or should have known of this result. But one cannot place a liability on another merely by showing that because of an act of that other the complainant has been injured in some way. *Lasala* v. *Holbrook* (N. Y. 1833) 4 Paige Ch. 169; *Thurston* v. *Hancock* (1815) 12 Mass. *220. There must be shown a duty on the defendant not to cause an injury to the plaintiff and as to the existence of this duty under circumstances like the present there are at least two views. The first, as adopted by the court in the principal case, is that the plaintiff had a right not to have his land damaged by rats, and to enforce that right could have killed the rats as animals *ferae naturae,* but acquired no right against the defendant who had no property in the rats. *Boulston's Case* (1598) Co. Rep., Pt. V, *104b. However, it was suggested that had the defendant by some means attracted animals or human beings who then injured the plaintiff's land, but which the plaintiff could not lawfully kill, the defendant would have been liable. *Farrer* v. *Nelson* (1885) 15 Q. B. D. 258; see *King* v. *Moore* (1832) 3 B. & Ad. 184. The distinction seems weak, Salmond, Torts (4th ed.) 227, n. 6, for the right against the defendant, if it exists, is as real in one case as the other; the plaintiff's right to kill seems pertinent rather to the question of mitigation of damages. On the other hand, there is a generally accepted rule that one who brings upon his land that which, if it escapes, may do damage is liable for all the probable consequences of the escape, although guilty of no negligence. *Fletcher* v. *Rylands* (1866) L. R. 1 Ex. 265, 279; *aff'd.* (1868) 3 H. L. 330, 339. This strict doctrine applies only to things brought upon the land and not to what is naturally or already there, no matter how noxious. *Giles* v. *Walker* (1890) 24 Q. B. D. 656; *Harndon* v. *Stultz* (1904) 124 Iowa 734, 100 N. W. 851 (noxious seeds); *Brady* v. *Warren* (1900) 2 Ir. Rep. 632, 641 (rabbits); but it is applicable where there has been an artificial accumulation and escape of what was naturally on the land. *Farrer* v. *Nelson, supra.* It seems that the court in the principal case should have held that the defendant, by maintaining the bone pile and thereby attracting rats, of which result he must have been aware, knowingly brought the

rats on his land and was responsible, by the rule of *Fletcher* v. *Rylands,* for all consequential damage.

WILLS—FAILURE OF EXECUTORS TO EMPLOY DESIGNATED PERSON AS DIRECTED BY THE WILL.—The defendant executors carried on the business of their testator as trustees under authority of the will, which also contained the following clause: "In consideration of his faithful and efficient services and knowledge of the business, I will and direct that my son-in-law * * * be retained and employed in the conduct of said business * * * at a salary of $2,000 per year." The son-in-law, the plaintiff in the present action, alleged that he tendered his services, which were refused, and sued at law to recover at the rate of $2000 a year for twelve years. *Held,* the defendants were under a binding obligation to employ him at the salary named, but his remedy was in equity to impress an equitable lien upon the estate in their hands to the extent of his damage, and all the beneficiaries under the will should have been made parties to the action. *Hughes* v. *Hiscox* (1919) 174 N. Y. Supp. 564.

If the testator's intention in the instant case was to subject his estate to a charge or trust in favor of the plaintiff, in the nature of an annuity, conditioned upon the latter's working in the business, the holding is undoubtedly correct. *Phillips* v. *Phillips* (1889) 112 N. Y. 197, 19 N. E. 411; *cf. Hodge* v. *Churchward* (1847) 16 Sim. 71. But it is submitted that the testator's words express instead an intention that the plaintiff should have only a right to be employed, on the same footing as other employees, though at a definite salary. If so, it is submitted that the nature of that right can be explained only as a power held in trust for the plaintiff by the defendants. The testator had limited their implied general power, to employ whomsoever they pleased in the conduct of the business, by an explicit mandate to employ the plaintiff, and the courts will construe a mandatory power as one held in trust to be exercised in favor of the designated beneficiary. 1 Perry, Trusts (6th ed.) §§ 248, 249; *Brown* v. *Higgs* (1803) 8 Ves. Jun. 561, 574; *Babbitt* v. *Babbitt* (1875) 23 N. J. Eq. 44. This hypothesis is in accord with the early cases of *Hibbert* v. *Hibbert* (1808) 3 Mer. 681 and *Williams* v. *Corbet* (1837) 8 Sim. 349, and is not *contra* to *Shaw* v. *Lawless* (1838) 5 Cl. & Fin. 129 and *Finden* v. *Stephens* (1846) 2 Phill. 142, *cf. Jewell* v. *Barnes' Adm'r.* (1901) 110 Ky. 329, 61 S. W. 360, in which the language of the will was precatory and not mandatory,—a distinction which was overlooked in the leading case of *Foster* v. *Elsley* (1881) L. R. 19 Ch. D. 518, although the doctrine of that case, that a testamentary direction to executors to employ a designated person as attorney is invalid, has usually been followed on the ground of the confidential relationship involved. *Matter of Wallach* (1914) 164 App. D. 600, 150 N. Y. Supp. 302, *aff'd* 215 N. Y. 622, 109 N. E. 1094. There is no such confidential relationship in the principal case. Hence it would seem that the defendants' failure to employ the plaintiff constituted a breach of trust to him, and since trustees are personally liable for breach of trust, 2 Perry, *op. cit.* § 845; *cf. Fenwick* v. *Green-*